

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
RALPH W. KAHELE, dba BIG)
RALPH'S TRANSPORT)
Notice of Failure to Comply)
With Hawaii Revised Statutes)
and Commission's Regulations)
Order to Show Cause Why)
Respondent's Operating)
Authority Should Not Be)
Suspended or Revoked.)
_____)

DOCKET NO. 02-0261

DECISION AND ORDER NO. 20245

RECEIVED

2003 JUN 19 P 4:20

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed June 19, 2003
At 2:00 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
RALPH W. KAHELE, dba BIG)
RALPH'S TRANSPORT)
Notice of Failure to Comply)
With Hawaii Revised Statutes)
and Commission's Regulations)
Order to Show Cause Why)
Respondent's Operating)
Authority Should Not Be)
Suspended or Revoked.)
_____)

Docket No. 02-0261
Decision and Order No. 20245

DECISION AND ORDER

I.

On May 12, 2003, the duly appointed hearings officer issued Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer (recommended decision) regarding the above-entitled matter. The recommended decision was served upon RALPH W. KAHELE, dba BIG RALPH'S TRANSPORT (Respondent) on May 12, 2003, via first class mail. On May 23, 2003, Respondent filed a letter requesting the reconsideration of the hearing officer's recommended decision and expressing a willingness of Respondent's son, Ralph Kahele, to continue his father's motor carrier business. The commission will treat Respondent's letter as timely filed written exceptions to the recommended decision.

In the recommended decision, the hearings officer recommended that the commission: (1) revoke Respondent's certificate of public convenience and necessity (CPCN)

number 5132-C, based upon, among other reasons, the fact that Respondent, who operated the motor carrier business as a sole proprietor, is now deceased and (2) vacate Order No. 19572¹ (Order No. 19572) and waive the filing of the annual financial report (AFR) and motor carrier fee (Fee) for the year ended 2001.

Upon review of the entire record, the commission concludes that the recommended decision should be adopted, in part, and reversed, in part. The commission finds that Respondent's death necessitates the termination of CPCN No. 5132-C.² Accordingly, the commission concludes that the recommended decision as to the first paragraph recommending revocation should be adopted.³

On May 23, 2003, Respondent's family filed the AFR and paid the Fee for the years ended 2001 and 2002. By letter dated

¹By Order No. 19572, filed on September 30, 2002, Respondent was ordered to appear before the commission on October 29, 2002, at 9:00 a.m. to show cause why Respondent's certificate of public convenience and necessity number 5132-C should not be suspended or revoked for failure to comply with Hawaii Revised Statutes §§ 271-25 and 271-36.

²A CPCN does not automatically transfer to a decedent's spouse or heirs, since Hawaii Revised Statutes § 271-14 states that no certificate confers any proprietary or property right in the use of the public highways. Case law also clearly states that a certificate is a privilege (as opposed to a right) that is personal to the certificate holder (in this instance, Ralph W. Kahele), and is not impliedly transferable. See, Territory v. Fung, 34 Haw. 52 (1936), which also states that a certificate is not a franchise. Consistent with such analysis, the commission previously has held that motor carriers certificates or permits should be terminated upon the death of a motor carrier operating a business as a sole proprietor. See, e.g., Order No. 20100, filed on March 25, 2003, in Docket No. 03-0077.

³An application for a new CPCN must be filed with the commission, pursuant to Hawaii Revised Statutes (HRS) § 271-12, if Respondent's family determines that they desire to operate as a motor carrier in the State of Hawaii.

May 27, 2003, the commission's audit division notified Respondent's family that additional penalties and interest in the amount of \$3,426.69 are due for the untimely filing of the AFRs and payment of the Fees, pursuant to Hawaii Administrative Rules (HAR) § 6-62-24 and -42 and Hawaii Revised Statutes § 271-27(i). As a result, the commission concludes that the recommended decision as to the second paragraph vacating Order No. 19572 should be reversed and the penalties and interest in the amount of \$3,426.69 assessed should be waived.

II.

THE COMMISSION ORDERS:

1. The recommended decision, attached hereto as Exhibit A, is adopted, in part, as to the revocation of Respondent's CPCN No. 5132-C, and reversed, in part, as to the waiver of the filing of the 2001 AFR and Fee, as the commission's final decision and order in this matter.


2. Respondent's CPCN No. 5132-C is terminated.


3. The penalties and interest in the amount of \$3,426.69, assessed by the commission for the late filing and payment of the 2001 and 2002 AFRs and Fee, are waived.

DONE at Honolulu, Hawaii the 19th day of June, 2003.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----))
) DOCKET NO. 02-0261
RALPH W. KAHELE, dba)
BIG RALPH'S TRANSPORT)
)
Notice of Failure to Comply) FINDINGS OF FACT
With Hawaii Revised Statutes) CONCLUSIONS OF LAW, AND
and Commission's Regulations) RECOMMENDED DECISION
Order to Show Cause Why) AND ORDER OF
Respondent's Operating) HEARINGS OFFICER
Authority Should Not Be)
Suspended or Revoked.)
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED DECISION AND ORDER OF HEARINGS OFFICER

I.

INTRODUCTION

By Order No. 19572, filed on September 30, 2002, RALPH W. KAHELE, dba BIG RALPH'S TRANSPORT (Respondent), was ordered to appear before the commission on October 29, 2002, at 9:00 a.m. to show cause why Respondent's certificate of public convenience and necessity (CPCN) number 5132-C should not be suspended or revoked for failure to comply with Hawaii Revised Statutes (HRS) §§ 271-25 and 271-36.¹

¹HRS § 271-25 requires Respondent to file an annual financial report (AFR) with the commission, while HRS § 271-36 requires Respondent to pay an annual motor carrier gross revenue fee (Fee). Hawaii Administrative Rules (HAR) § 6-62-42 provides that the AFR must be filed with the commission by April 30 of each year, while HAR § 6-62-24 provides that the Fee must be paid to the commission on or before April 30 of each year.

An order to show cause hearing (hearing) was held at 9:00 a.m. on October 29, 2002, at the Public Utilities Commission Hearing Room, 465 South King Street, Room B-3. Respondent's son, Ralph Kahele appeared on behalf of Respondent and informed the commission that Respondent had passed away. Respondent's wife, Theresa Kahele was also present at the hearing.² Hearings officer Benedyne S. Stone presided over the hearing.

Based upon a review of the record and the testimony presented at the hearing, the issue is whether Respondent's CPCN should be suspended or revoked for Respondent's failure to file an AFR, and to pay his Fee, in violation of the State of Hawaii (State) motor carrier laws, rules, and regulations.

Having considered the testimony and other evidence presented at the hearing, and the entire record in this matter, the hearings officer hereby renders the following findings of fact, conclusions of law, and recommended decision and order.

II.

FINDINGS OF FACT

1. The commission notified Respondent on May 17, 2002 that he had failed to file his AFR and pay his Fee.³

²Members of the commission's audit staff were sworn in and remained present during the hearing in the event they would be called upon to testify in the instant matter.

³Pursuant to HAR § 6-61-48, this hearings officer takes official notice of certain facts contained in the commission's motor carrier records.

2. As of the date of the hearing, Respondent had not filed his AFR or paid his Fee.

3. At the hearing, Ralph Kahele stated that while responsibility for filing the AFR and paying the Fee fell to his mother after his father's death, due to an accident and subsequent recovery period, she missed the deadline.

III.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, this hearings officer makes the following conclusions of law. Any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

1. HRS § 271-19 authorizes the commission, after notice and hearing, to suspend or revoke any CPCN, in part or in whole, if the holder is found to be in violation of any of the provisions of chapter 271, HRS.

2. Pursuant to HAR § 6-62-24, Respondent's Fee for 2001 was due to the commission "on or before April 30" of 2002.

3. Pursuant to HAR § 6-62-42, Respondent's AFR of its motor carrier operations was due to be filed with the commission "by April 30 of [2002]".

4. Based on the aforementioned findings of fact, this hearings officer concludes that because Respondent failed to file his AFR and to pay his Fee, Respondent is in violation of HRS §§ 271-25 and 36.

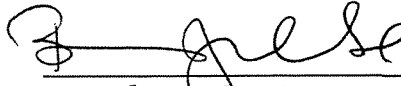
IV.

RECOMMENDED DECISION AND ORDER

1. Based on the foregoing, and in light of the mitigating circumstances surrounding Respondent's death and the additional fact that Respondent operated as a sole proprietor, this hearings officer recommends that Respondent's CPCN be revoked pursuant to HRS § 271-19(a).

2. This hearings officer also recommends that Order No. 19572 be VACATED, and that Respondent's AFR and Fee for 2001 be waived.

DATED: Honolulu, Hawaii this 12th day of May, 2003.



Benedyne S. Stone
Hearings Officer
Public Utilities Commission

Kahele: la

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (VIA PICKUP)
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

THERESA KAHELE
2590 Kilauea Avenue
Hilo, HI 96720



Leatrice G. Asahi
Citations Clerk

DATED: MAY 12, 2003.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20245 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

RALPH W. KAHELE, dba BIG RALPH'S TRANSPORT
2590 KILAUEA AVENUE
HILO, HI 96720
(CM #7002 2030 0006 6798 1799)

BENEDYNE S. STONE
HEARINGS OFFICER
PUBLIC UTILITIES COMMISSION
465 S. King Street, Room 103
Honolulu, HI 96813



Karen Higashi

DATED: June 19, 2003